THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

R.S.A. No. 894 of 2005

Date of Decision: 18 -10 - 2006

Sukhwant Singh **.....Appellant**

v.

State of Punjab and others **.....Respondents**

CORAM: HON'BLE MR.JUSTICE P.S.PATWALIA

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Present: Mr.S.K.Sharma, Advocate
for the appellant.

Mr.G.C.Gupta, DAG, Punjab
for the respondents.

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P.S.PATWALIA, J.

The present regular second appeal has been filed by the plaintiff against concurrent findings recorded by the Courts below dismissing the suit filed by him.

Plaintiff while working as a Constable in Punjab Police was dismissed from service by order dated 20.12.1984. He filed a suit in March, 1998 for declaration that he is entitled to arrears of three years and two months of salary preceding the date of the suit by treating the order of dismissal as a nullity and by treating the plaintiff as having continued in service. The trial Court examined the claim on merits as also on the question of limitation. After examining the evidence on record a finding was recorded against the plaintiff on merits upholding the order of dismissal. On the question of limitation also the trial Court held that the law has now been settled by the Hon'ble Supreme Court in the

judgment reported as **State of Punjab and others v. Gurdev Singh, Ashok Kumar**, AIR 1991 SC 2219 that even a void order had to be declared to be void by a Court of law and that could only be done within the period of limitation. If the statutory time limit expires, the Court cannot give the declaration sought for. The relevant observations of the Hon'ble Supreme Court in the said judgment are as hereunder:-

> "8. It will be clear from these principles, the party aggrieved by the invalidity of the order has to approach the Court for relief of declaration that the order against him is inoperative and not binding upon him. He must approach the Court within the prescribed period of limitation. If the statutory time limit expires the Court cannot give the declaration sought for."

Relying on the said judgment the trial Court concluded that the present suit filed after 14 years of the passing of the order was barred by limitation. Accordingly, the suit filed by the plaintiff was dismissed.

In a first appeal filed by the plaintiff both these findings were affirmed and consequently the appeal was dismissed.

In the facts of this case, I am of the opinion that in views of the judgment of the Hon'ble Supreme Court in **Gurdev Singh's case (supra)** the present suit filed after over 14 years of the passing of the order of dismissal was barred by limitation. The same has rightly been dismissed by the Courts below on this ground alone.

Learned counsel for the appellant had placed reliance on an earlier judgment of the Hon'ble Supreme Court in **State of Madhya Pradesh v. Syed Qamarali**, 1967 S.L.R. 228 and **Laxman Dundappa Dhamanekar and another v. Management of Vishwa Bharata Seva Samiti and another**, (2001)8 SCC 378 to contend that a suit for recovery of pay could be filed even beyond the period of limitation. I, however, find no merit in this contention. The plaintiff would be

entitled to pay and allowances only after the order of dismissal is set aside. Since the suit to challenge the order is barred after three years, no pay and allowances can be granted. The judgment in **Syed Qamarali's case (supra)** has been considered by the Hon'ble Supreme Court in **Gurdev Singh's case (supra)** and it is thereafter that a firm firm finding has been recorded as extracted hereinabove. The judgment in **Laxman Dundappa Dhamanekar's case (supra)** is totally different and has no application to the facts of the present case. There the claim for salary was for a period when the appellants had actually discharged their duties. That is not the case here.

I am therefore of the opinion that the suit filed by the plaintiff was clearly barred by the law of limitation and has thus rightly been dismissed by the Courts below. I therefore find no question of law arising for determination in this regular second appeal and the same is accordingly dismissed.

(P.S.PATWALIA)
JUDGE

October 18, 2006.

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